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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,323	07/07/2003	Edward Anthony Bezek	CFLAY.00199	7359
22858	7590	10/25/2005	EXAMINER	
CARSTENS YEE & CAHOON, LLP			CASTELLANO, STEPHEN J	
P O BOX 802334			ART UNIT	
DALLAS, TX 75380			PAPER NUMBER	
			3727	

DATE MAILED: 10/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/614,323	Applicant(s) BEZEK, EDWARD ANTHONY	
	Examiner Stephen J. Castellano	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
 4a) Of the above claim(s) 3,8,11,12,15,16 and 26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-7, 9, 10, 13, 14 and 17-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Claims 1-26 are pending. Claims 3, 8, 11, 12, 15, 16 and 26 have been withdrawn without traverse. Claims 1, 2, 4-7, 9, 10, 13, 14 and 17-25 will be treated on their merits.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 6, 13, 14, 17, 19 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Kawaguchi et al. (Kawaguchi).

The previous explanation is in the first Office action mailed April 7, 2005.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4-7, 13, 14 and 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shimada et al. (Shimada) in view of Conrad and Zimmer et al. (Zimmer).

Shimada discloses the invention as explained in the previous Office action mailed April 7, 2005. Shimada discloses the invention except for the substantially circular bottom. Conrad teaches a bottle with a circular bottom. It would have been obvious to modify the bottom of Shimada to be circular as a matter of design choice in choosing a bottom shape, the circular shape has the advantage of not trapping liquids in the corners of a polygonal bottom making dispensing easier and more efficient.

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If it is deemed that the majority oval shape of Shimada is not substantially cylindrical insofar as the majority oval shape of the present invention is oval shaped and is different in some way from the oval shape of the present invention. Conrad teaches an oval shape which is more like a circle as shown in Fig. 5. It would have been obvious to modify the shape of a middle height portion of Shimada's bottle's lateral cross section to be like that of Conrad as a matter of design choice of shape, the more circular less elongated shape of the bottle's cross section has the advantage of smoother flow due to less elongation of the bottle in the lateral direction.

Re claims 9, 10 and 22-25, the explanation of the Zimmer combination is explained in the previous Office action mailed April 7, 2005.

Applicant's arguments filed July 7, 2005 have been fully considered but they are not persuasive. Applicant suggests that the body of Kawaguchi is not substantially cylindrical. Insofar as applicant discloses a cylindrical body which is oval in cross section over most of the containers height and circular in cross section at the top and bottom. Kawaguchi discloses in Fig. 18 a bottom view that the container is substantially circular at the top and bottom rather than polygonal shaped and discloses in Fig. 19 a cross section that is more closely related to a circular cross section than a polygonal or square cross section. Therefore, Kawaguchi discloses a substantially cylindrical body with a substantially circular cross section insofar as applicant has disclosed substantially cylindrical. The open and closed ends of Kawaguchi are substantially circular in cross section insofar as these cross sections most closely replicate a circular cross section than another cross section such as polygonal. The deviation of the walls at 202n and 202m is minor and is considered to be "substantially cylindrical." Applicant refers to 212n a wall portion on an embodiment of Fig. 22 not applied and not relied upon in this rejection.

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New grounds of rejection have been necessitated by applicant's amendment.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner can normally be reached on Tu-F 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc